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January 25, 2011

VIA E-FILING & FEDERAL EXPRESS

Honorable Madeline Cox Arleo
United States District Court
District of New Jersey
Martin Luther King, Jr. Federal Building and Courthouse
50 Walnut Street, Room 2060
Newark, New Jersey 07101

Re: Picatinny Federal Credit Union v. Federal National Mortgage Association
Civil Action No. 09-cv-01295-GEB-MCA ("*Picatinny*");

Sperry Associates Federal Credit Union v. Federal National Mortgage Association
Civil Action No. 09-cv-04782-GEB-MCA ("*Sperry*");

Federal National Mortgage Association v. Proponent Federal Credit Union
Civil Action No. 10-cv-00473-GEB-MCA ("*Proponent*"); and

Suffolk Federal Credit Union v. Federal National Mortgage Association
Civil Action No. 10-cv-02763-GEB-MCA ("*Suffolk*")

Dear Judge Arleo:

This firm represents Federal National Mortgage Association ("Fannie Mae") in each of the above-referenced matters (collectively, the "consolidated cases"). As requested, this letter provides an update on the status of discovery in the consolidated cases, and offers proposals for discovery going forward in each case.

I. THE *PICATINNY* MATTER

A. Fact Discovery

Fact discovery was completed in the Picatinny matter on November 1, 2010, and the parties have filed competing motions for summary judgment that are in the process of being briefed. Fannie Mae's response to Picatinny's belated request to take the deposition of former Fannie Mae employee Harriet Wolff is set forth in a separate letter, which is also being filed and served today.

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B. Expert Discovery

Since this Court's entry of the Seventh Amended Pretrial Discovery Order on November 11, 2010, both parties' affirmative and responding experts reports have been exchanged. On or about January 14, 2011, Picatinny advised Fannie Mae that it objected to Fannie Mae's report of handwriting expert Todd Welch served that same day, which was offered in rebuttal to Picatinny's contention that the signature appearing on a single Disputed Note was a forgery. Picatinny's sole objection appears to be one of timing as it apparently believes that Mr. Welch's report is not a rebuttal report. That is simply not true. Fannie Mae expected Picatinny to submit a report of its own handwriting expert on the date when affirmative reports were due. When Picatinny did not, Fannie Mae submitted the report of its own expert in response to Picatinny's assertion of a single forgery. More to the point, however, Picatinny has suffered no prejudice, regardless of when the Welch report was served. The report has no bearing on either parties' pending motion for summary judgment, and Fannie Mae has no objection if Picatinny wishes to serve a responsive report of its own. Expert depositions have not been scheduled.

In light of the above, Fannie Mae proposes that expert discovery, including depositions, be completed no later than March 31, 2011.

II. THE *SPERRY* MATTER

Document discovery in the *Sperry* matter is complete. Both parties have served and responded to interrogatories and requests for the production of documents. Fannie Mae's 30(b)(6) deposition of Sperry's corporate representative is scheduled to take place on Thursday, January 27, 2011. No other depositions in this matter have been scheduled to date, and expert discovery has yet to commence. In light of the above, Fannie Mae proposes the following schedule for the completion of discovery in the *Sperry* matter:

Fact deposition deadline: March 31, 2011.

Expert report deadline: April 29, 2011.

Expert deposition deadline: May 31, 2011.

III. THE *SUFFOLK* MATTER

Pursuant to this Court's text order of December 8, 2010, Suffolk was to conclude its document production to Fannie Mae by no later than January 15, 2011. Despite its awareness of this deadline, the first time Suffolk provided Fannie Mae with information regarding its electronically stored information and search terms was on January 4, 2011.

On January 12, 2011, Suffolk wrote a letter, attached as Exhibit A, all but admitting that Suffolk had yet to begin its review of its electronically stored information, and proposing to produce to Fannie Mae certain "presumptively responsive" documents while withholding whatever documents Suffolk purported to be "presumptively privileged." These "presumptively privileged" documents would, according to Suffolk, need to undergo a "document-by-document privilege review" that would no doubt extend well beyond the Court's January 15 production deadline.

On January 18, 2011, Suffolk served a late (and incomplete) production of its documents on Fannie Mae. The cover letter accompanying Suffolk's production stated that a supplemental document production, as well as supplemental interrogatory responses, would be forthcoming under separate cover. Yesterday evening, we received, by email, a cover letter from Suffolk's counsel concerning an additional production of both electronic and hard copy documents. *See* letter, dated January 24, 2011, from Keith Nusbaum to Rebecca Brown, attached as Exhibit B. That letter indicates that Suffolk has to date, produced more than one million pages of documents. The letter further concedes, however, that Suffolk is "not yet finished with our production." As to a further production, Suffolk's counsel stated only "We expect to have these productions to you shortly." Suffolk has not yet supplemented any of its interrogatory responses.

In light of the above, Fannie Mae proposes the following schedule for the completion of discovery in the *Suffolk* matter:

Deadline for completion of document discovery and identification of document sources/custodians: January 31, 2011.

Fact deposition deadline: April 29, 2011.

Expert report deadline: June 15, 2011.

Expert deposition deadline: July 15, 2011.

IV. THE *PROPONENT* MATTER

Document discovery in *Proponent* has largely been completed with the exception of certain documents Proponent is reviewing relating to former employees. Fannie Mae is unaware of the status of Proponent's review of its former employees' documents and does not know when Proponent's document production will be complete.

Fannie Mae recommends that Proponent be ordered to complete its document production immediately, but in any event no later than January 31, 2011.

No depositions have been noticed in *Proponent* to date. Proponent has not moved forward with discovery at the same rate as in the other consolidated cases. This is primarily due to the fact that Proponent is differently situated from the other credit union plaintiffs in that Proponent, like Fannie Mae, claims to be in possession of the original promissory notes in dispute. To determine which party is in possession of the originals, the parties have engaged experts to evaluate the authenticity of the notes. Proponent's expert still needs to examine the set of original notes in Fannie Mae's custody, and we recommend that he do so no later than February 15, 2011. A round of settlement discussions is likely to take place after Fannie Mae's and Proponent's experts have reviewed both parties' sets of promissory notes.

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In light of the above, Fannie Mae proposes the following schedule for the completion of discovery in the Proponent matter:

Fact deposition deadline: April 29, 2011.

Expert report deadline: May 31, 2011.

Expert deposition deadline: June 30, 2011.

We hope that this status letter is helpful. We look forward to discussing these matters with Your Honor during the teleconference scheduled on January 28, 2011 at 2:00 p.m.

Respectfully submitted,

Alan E. Kraus
of LATHAM & WATKINS LLP

Attorneys for Federal National Mortgage Association

cc: Counsel of Record

Exhibit A

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January 12, 2011

BY E-MAIL

Rebecca K. Brown, Esq.
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One Newark Center, 16th Floor
Newark, New Jersey 07101

Re: *Suffolk Federal Credit Union v. Federal National Mortgage Association*
Civil Action No. 10-cv-02763-GEB-MCA

Dear Rebecca:

I write with respect to Suffolk's review and production to Fannie Mae of the electronically stored information ("ESI") of numerous Suffolk custodians. First, the four additional search terms that you requested (delay*, late*, audit* and original*) are overly broad. Applying the forty-six search terms we proposed to just seven of the twenty-two custodians yielded in excess of 180,000 documents. Adding your four proposed search terms nearly doubled the number of documents. The search terms we proposed were calculated to find documents that relate to Suffolk's mortgage business, one of many businesses at Suffolk. Your four additional generic terms will likely yield results that have no relevance to Suffolk's relationship with Fannie Mae, CU National or U.S. Mortgage. Our proposed search terms will encompass any documents or communications that include the terms delay*, late*, audit* and original* and relate to Suffolk's mortgage operations. We are prepared to run the search terms that we had proposed and begin producing documents promptly unless you tell us that you will be seeking court intervention to get your terms added to the list. Please advise promptly.

Second, because of the large volume of potentially relevant documents, manually reviewing every document for privileged information will be unduly burdensome to our client and will delay our production. In order to expedite the disclosure process and to reduce the burden on Suffolk in responding to Fannie Mae's demands, we propose the following:

1. For each custodian, Suffolk will search the ESI for all documents that contain any of search terms and are dated between January 1, 1999 and the present, as requested in your Documents Requests (the "Presumptively Responsive Documents").

2. Suffolk will cull from the Presumptively Responsive Documents any documents that contain the terms listed on Attachment A, which include the last names, email addresses and firm names of attorneys that represented Suffolk during the relevant time period and the last names and organization names of government entities that performed regulatory audits and examinations of Suffolk (the "Presumptively Privileged Documents").

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3. Suffolk will produce to Fannie Mae the Presumptively Responsive Documents, minus the Presumptively Privileged Documents.

4. Suffolk will then conduct a document-by-document privilege review of the Presumptively Privileged Documents, produce to Fannie Mae any documents that Suffolk determines are not privileged, and log documents that are responsive and privileged.

To execute this proposal, we would require Fannie Mae to stipulate that, pursuant to Federal Rule of Evidence ("FRE") 502(b), (i) any disclosure by Suffolk of privileged information after following the foregoing procedures shall be deemed "inadvertent" pursuant to FRE 502(b)(1) and pursuant to the parties' Stipulation and Protective Order dated September 25, 2009, and (ii) the foregoing steps taken by Suffolk constitute "reasonable steps to prevent disclosure" of privileged information pursuant to FRE 502(b)(2). Fannie Mae must also agree that it shall (a) notify Suffolk in writing promptly after discovering any privileged document that was inadvertently produced, (b) not use any such document during deposition or at trial, and (c) not show any such document to anyone who has not already been given access to it subsequent to its discovery.

Finally, the existing Stipulation and Protective Order shall continue to be deemed to have controlling effect in any other Federal and State proceedings pursuant to FRE 502(d). Please let us know whether Fannie Mae agrees to the above.

Sincerely,

Keith C. Nusbaum

Attachment A

sonnenschein
snrdenton
snr
denton
meyerhoff
gmeyerhoff
mcdonald
hmcdonald
nusbaum
knusbuam
curcio
lcurcio
albanese
calbanese
pancotti
dpancotti
zahner
bzahner
diament
mdiament
franco
sfranco
fkks
"frankfurt kurnit"
goldman
jgoldman
beeber
jbeeber
herbet
lherbert
seewann
aseewann
boyle
pboyle
campasano
campasanolaw
schulman
culaw
ncua
mcfall
entin
desantis
whitehead

Exhibit B

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January 24, 2011

BY E-MAIL AND FEDEX

Rebecca K. Brown, Esq.
Latham & Watkins LLP
One Newark Center, 16th Floor
Newark, New Jersey 07101

Re: *Suffolk Federal Credit Union v. Federal National Mortgage Association*
Civil Action No. 10-cv-02763-GEB-MCA

Dear Rebecca:

Enclosed please find a hard drive and a CD containing additional documents produced in response to Fannie Mae's First Request for the Production of Documents. A description of the categories of documents is as follows:

- SFCU_FNMA_00550187 - SFCU_FNMA_00651435: Documents from custodian Mary Fern Palacio (ESI).
- SFCU_FNMA_00651436 - SFCU_FNMA_00958551: Documents from custodian Robert Maimoni (ESI).
- SFCU_FNMA_00958552 - SFCU_FNMA_01068233: Documents from custodian William O'Brien (ESI).
- SFCU_FNMA_01068234 - SFCU_FNMA_01072379: Duplicate original notes and mortgages that were held by Suffolk's counsel, Nicholas Campasano, and which he had collected from the borrowers at the loans' closings (images of hardcopy documents).

Previously, you requested that Suffolk provide you with "custodian" or "source" information for the documents Suffolk has produced. Suffolk's productions have come in two forms -- (i) electronically stored information ("ESI") that we have isolated, run searches with terms we provided you in advance, and produced, and (ii) hard-copy documents that Suffolk located in off-site storage or its offices, imaged and produced.

With respect to our ESI productions, which constitute an overwhelming majority of the documents produced, we have provided and will provide detailed custodian information in the cover letters that accompany those productions (see above and letter of January 18, 2011).

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As for hardcopy documents, the source of previously produced documents is as follows:

- SFCU_FNMA_00000001 - SFCU_FNMA_00000456 -- documents produced to Suffolk Federal Credit Union by the office of the United States Attorney for the District of New Jersey.

- SFCU_FNMA_00000457- SFCU_FNMA_00043520 -- documents produced to Suffolk Federal Credit Union by the trustee for the bankruptcy estate for U.S. Mortgage, Inc. and CU National LLC.

- SFCU_FNMA_00043521 - SFCU_FNMA_00063235 -- working loan files for the 189 disputed loans stolen from Suffolk and sold to Fannie Mae without Suffolk's knowledge or authorization.

- SFCU_FNMA_00063236 - SFCU_FNMA_00158570 -- working loan files for undisputed loans serviced by CU National.

- SFCU_FNMA_00158571 - SFCU_FNMA_00161846 -- working files for the 35 undisputed loans Fannie Mae identified as files upon which it was relying for its "apparent authority" argument, copied from file cabinets at Suffolk's mortgage department in Medford, New York.

- SFCU_FNMA_00161847 - SFCU_FNMA_00162042 -- electronic documents collected from Suffolk's office in Medford, New York by Brian Downs, Senior Network Systems Administrator, consisting of electronic loan files.

- SFCU_FNMA_00162043 - SFCU_FNMA_00162083 -- correspondence with CU National from the files of Lisa Mingoia, Chief Finance Officer

- SFCU_FNMA_00162084 - SFCU_FNMA_00162140 -- interim remittance reports for the relevant time period of December 2004 through January 2009, copied from Michael McGrath's personal computer.

- SFCU_FNMA_00162160 - SFCU_FNMA_00162303 -- trial balance and month end reports for loans serviced by CU National and located in file cabinets at Suffolk's mortgage department in Medford, New York.

- SFCU_FNMA_00162318 - SFCU_FNMA_00162629 -- board minutes for Suffolk located in a vault in Suffolk's office in Medford, New York.

- SFCU_FNMA_00162711 - SFCU_FNMA_00163080 -- trial balance and moth end reports for loans serviced by CU National and located at Suffolk's office storage, Iron Mountain.

Suffolk also has, in its offices in Medford, New York, numerous boxes containing loan files for all of the undisputed loans serviced by CU National, requested by Fannie Mae, but not photocopied or imaged. As we previously indicated in our letter of November 12, 2010, those files are available for review by Fannie Mae at its convenience; thus far, Fannie Mae has not requested to review those documents.

With respect to the other hardcopy documents from Suffolk's November 12, 2010 production, these documents were located in Suffolk's offices in Medford, New York. We are following up on custodian information for these documents and will get back to you shortly.

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You also requested that we confirm whether or not information regarding payments from CU National and U.S. Mortgage is contained in the individual loan files. After reviewing the loans files and discussions with personnel at Suffolk, payment information is generally not included in the loan files. Payment information is located in the monthly trial balances and reports received by Suffolk from CU National and U.S. Mortgage. As pointed out above, these trial balances and reports were previously produced on November 12, 2010.

Finally, although we have produced over a million pages to Fannie Mae, we are not yet finished with our production. There is additional ESI to produce for twelve more custodians (currently being processed) and additional hardcopy documents. We expect to have these productions to you shortly.

Sincerely,

Keith C. Nusbaum